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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:
Mulligan et al.

Serial No. 09/826,998

Filed: April 3, 2001

For: EXECUTABLE CODE DERIVED FROM USER-SELECTABLE LINKS EMBEDDED WITHIN THE COMMENTS PORTION OF A PROGRAM

Group Art Unit: 2173
Examiner: Vu, K.

Atty. Dkt. No. 5298-05300

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12/27/2005
Date

Pamela Gerik

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

Sir/Madam:

Further to the Notice of Appeal faxed on October 27, 2005, the Appellant presents this Appeal Brief. The Notice of Appeal was filed following receipt of an Advisory Action mailed October 14, 2005. The Appellant hereby appeals to the Board of Patent Appeals and Interferences the final rejection of claims 1-21 and respectfully requests that this appeal be considered by the Board.

I. REAL PARTY IN INTEREST

The subject application is owned by Cypress Semiconductor Corporation, a corporation having its principal place of business at 3901 North First Street, San Jose, California, 95134, as evidenced by the assignment recorded at Reel 011695, Frame 0386.

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II. RELATED APPEALS AND INTERFERENCES

No other prior and pending appeals, interferences, or judicial proceedings are known to Appellant or Assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 1-21 stand finally rejected. No claims have been allowed, objected to, withdrawn or canceled. Claims 1-21 are being appealed.

IV. STATUS OF AMENDMENTS

No amendments to the claims have been filed subsequent to their final rejection. The Claims Appendix attached hereto reflects the current state of the claims.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Appellant's claimed subject matter includes an apparatus, computer-usable carrier medium and method for generating computer executable code using user-selectable links (i.e., "active links" or "hot links"), which are embedded within the comments portion of a computer program. As described in more detail below, the comments portion of the computer program can be modified by activating the user-selectable links within the comments portion. Modification of the comments portion creates a new data set that may be used to form the computer executable code. (*See*, e.g., Specification – page 3, lines 3-13; FIG. 3).

According to one embodiment, the presently claimed method may include the step of creating a data set by modifying a comments portion of a program. As set forth in the Specification, the step of modifying may include activating a user-selectable link embedded within the comments portion. In one example, the link can be selected by dragging an on-screen pointer to the link. When the pointer passes over the link, the link might change colors or otherwise become highlighted to note that the link is an "active" or "hot" link. In one example, a hot link may be described as a link that can be modified by clicking on the link to activate a pull-down menu. The pull-down menu might have different selections

which can be chosen by the on-screen pointer for modifying the link. Once the data set is created via modification of the user-selectable link, the method may include inserting the data set into an applications program to form the computer executable code. (*See*, e.g., Specification – page 4, lines 20-30; FIG. 3).

According to another embodiment, the presently claimed computer-usable carrier medium may include a computer program, comprising a first text preceded by a comments designator and succeeded by at least one link word that is adapted for modification by an on-screen pointer. In one example, the comments designator may be recognizable to a C programming platform as the "//" designator. As noted above, the "link" or "link word" succeeding the comments designator can be modified by dragging an on-screen pointer to the link, clicking on the link to activate a pull-down menu and selecting a different menu option with the assistance of the on-screen pointer. (*See*, e.g., Specification – page 4, lines 20-30; FIG. 3).

In addition, the computer program may include a second text, which is displayed on a display device along with the first text for presenting a data set that changes dependent on modification to the link word by the on-screen pointer or by modification of the data set. In other words, any change or modification to the link word residing within the first text (i.e., the comments portion of a computer program) will have a corresponding effect on the data set residing within the second text (i.e., the source code portion of the computer program). As shown in FIG. 3, for example, if the SYNC link (46) within the first text portion (38) is changed to ASYNC, then a change is made to the corresponding field (50) within the data set of the second text portion (40). By displaying the second text portion along with the first text portion on a display device, a user is able to note (in real-time) any changes to the data set which result from changes to the link word. In other words, displaying both the first and second text portions allows a user to view the effect of a link word modification. (*See*, e.g., Specification – page 5, lines 2-14; page 10, line 4 to page 11, line 5; FIG. 3).

According to yet another embodiment, an apparatus is provided in the present Specification for generating programmable signals. For example, the apparatus may include a compiler and other hardware. The compiler may be configured for generating a data set containing at least one field of bits in response to user-activation of a link embedded within a comments portion of a program. As noted above, the link may include at least one word, which is located on the same line as text that follows a comments designator (e.g., the "//" symbol). Although the comments designator may distinguish the text

as containing non-executable words, which are separate and distinct from lines of program commands, the link word(s) succeeding the comments designator may be activated by a user for modifying the comments portion and generating the data set. The hardware may then be used for generating programmable signals in response to the field of bits within the data set. (*See*, e.g., Specification – page 5, lines 16-20; FIGS. 1-3).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.

1. Claims 8, 9, 12, 14 and 21 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,438,746 to Martin (hereinafter "Martin").

2. Claims 1-4 and 15-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Martin in view of U.S. Patent No. 6,721,944 to Chaudhry et al. (hereinafter "Chaudhry").

3. Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over Martin and Chaudhry, in view of .S. Patent No. 6,026,233 to Shulman et al. (hereinafter "Shulman").

4. Claims 6-7 are rejected under 35 U.S.C. §103(a) as being unpatentable over Martin and Chaudhry, in view of U.S. Patent No. 4,541,048 to Propster et al. (hereinafter "Propster")

5. Claims 10 and 11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Martin in view of Shulman.

6. Claim 13 is rejected under 35 U.S.C. §103(a) as being unpatentable over Martin in view of Propster.

VII. ARGUMENT

The contentions of the Appellant with respect to the ground of rejection presented for review, and the basis thereof, with citations of the statutes, regulations, authorities, and parts of the record relied on are presented herein for consideration by the Board.

A. **Patentability of Claims 8, 9, 12, 14 and 21:**

Claims 8, 9, 12, 14 and 21 are rejected under 35 U.S.C. §102(e) as being anticipated by Martin. The standard for "anticipation" is one of fairly strict identity. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), MPEP 2131. More specifically, "all words in a claim must be considered when judging the patentability of that claim against the prior art." *In re Wilson* 424 F.2d. 1382 (CCPA 1970). Martin does not disclose all limitations of the currently pending claims, some distinctive limitations of which are set forth in more detail below.

1. **Martin fails to anticipate a computer program including a first text, which is preceded by a comments designator and succeeded by at least one link word that is adapted for modification by an on-screen pointer.**

Independent claim 8 recites, in part:

> A computer-usable carrier medium comprising a computer program, wherein the computer program comprises: a first text preceded by a comments designator and succeeded by at least one link word that is adapted for modification by an on-screen pointer...

Statements in the Office Action mailed January 24, 2005 and in the Final Office Action mailed July 28, 2005 suggest that Martin provides teaching for all limitations of present claim 8, and more specifically, that teaching for the present limitations may be found in column 5, column 10 and FIG. 9 of Martin (*See*, e.g., Office Action, page 2). The Appellants disagree. As set forth in more detail below, Martin fails to anticipate all limitations of present claim 8. As such, Appellants contend that the §102 rejection of present claim 8, and all claims dependent therefrom, cannot be maintained.

Statements in the Office Action suggest that "Martin teaches [a] method comprising a first text preceded by a comments designator (part 1000b in Fig. 9) and succeeded by [a] link word (col 10, lines 9-16) that is adapted [for] modification by an on-screen pointer (col 5, lines 51-60)" (Office Action, page 2). The Appellants disagree. Though Martin appears to disclose a comments portion of a computer program (e.g., portion 1000b of FIG. 9), where the comments are preceded by a comments designator (e.g., the // symbol shown in FIG. 9), Martin does NOT disclose that the comments designator may be succeeded by a link word that is adapted for modification by an on-screen pointer. In the above Office

Action statement, the Examiner suggests that teaching for the presently claimed link word, which is adapted for modification by an on-screen pointer, can be found in column 5, lines 51-60 and column 10, lines 9-16 of Martin. Upon review of these passages, Applicant's assert that there is absolutely no mention of a link word, an on-screen pointer, or a link word adapted for modification by an on-screen pointer within the passages cited by the Examiner, or anywhere else within Martin.

Further statements in the Office Action suggest that the "=" symbol shown in FIG. 9 of Martin can be interpreted to read upon the presently claimed "link word" (*see*, e.g., Office Action, page 7). The Appellants disagree. Even though FIG. 9 of Martin illustrates that an "=" symbol may be embedded within a comments portion of a program (presumably, as text entered by a user), Martin does NOT teach or suggest that the "=" symbol can be modified by an on-screen pointer. Instead, Martin appears to teach that the "=" symbol is merely an assignment symbol, which assigns specification data (e.g., 99%) to some functional criteria (e.g., availability). *See*, e.g., FIG. 9 and corresponding text of Martin.

Further statements in the Office Action suggest that "[s]ince the 'link word' in the claim is a broad term, it can be reasonably interpreted as = symbol which links two parts of a comment (for example see 1002b). Since the comment is text entered by a user, each word of the comment (including =) can be modified by an on-screen pointer." (*See*, Office Action, pages 7-8). The Appellants disagree, for at least the reasons set forth in more detail below.

Appellants recognize the need to give the claims the broadest reasonable interpretation during the examination process. However, as set forth in MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). As described below, Martin fails to provide express or inherent description for a "link word," which is adapted for modification by an on-screen pointer.

First of all, Martin fails to expressly teach or suggest that the "=" symbol (shown in FIG. 9 of Martin) can somehow be changed or modified by an on-screen pointer. Although Martin implies that the specification data succeeding the "=" symbol may change depending on application (*see*, e.g., the table shown in column 8 of Martin, where the availability data differs between applications), Martin never once suggests that the "=" symbol, itself, may be changed or modified (e.g., to an $\neq$ $\leq$ or $\geq$ symbol). Martin provides even less teaching or suggestion for modifying the "=" symbol with an on-screen

pointer. As such, Martin provides absolutely no teaching or suggestion for a link word, which is embedded within a comments portion and adapted for modification by an on-screen pointer, as recited in present claim 8.

The Examiner appears to suggest that the presently claimed link word is an inherent feature of Martin (*see*, e.g., Office Action, page 8). However, as set forth in MPEP 2112, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

By failing to teach or suggest that the "=" symbol – not the specification data -- may be changed or modified by an on-screen pointer, Martin provides absolutely no motivation that would enable one skilled in the art to conclude that the missing descriptive matter (i.e., the ability to modify the "=" symbol with an on-screen pointer) is necessarily present within the "=" symbol described by Martin. In other words, the mere possibility that the "=" symbol could be modified by an on-screen pointer is not sufficient to establish inherency. As such, Martin fails to provide inherent teaching, and therefore, fails to anticipate the presently claimed link word.

2. The Examiner has failed to support a ground of anticipation of present claim 8 by Martin.

The standard for "anticipation" is one of fairly strict identity. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP 2131. As pointed out above, Martin does not disclose a computer program including a first text, which is preceded by a comments designator and succeeded by at least one link word that is adapted for modification by an on-screen pointer, as recited in present claim 8. Martin, therefore, cannot teach each and every element set forth in claim 8. As a consequence, claim 8 is not anticipated by Martin.

Conclusion

As explained in Arguments 1-2 above, Martin fails to provide teaching or suggestion for all limitations of independent claim 8. Therefore, claim 8 is not anticipated by Martin. Since claims 9-14 and 21 are dependent from claim 8, claims 9-14 and 21 are also not anticipated by Martin. The rejection of claims 8, 9, 12, 14 and 21 under 35 U.S.C. §102 is, therefore, asserted to be erroneous.

B. Patentability of Claims 1-7, 10, 11, 13 and 15-20:

Claims 10 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Martin in view of Shulman. Claim 13 was rejected under 35 U.S.C. §103(a) as being unpatentable over Martin in view of Propster. As set forth in more detail below, the §103(a) rejection of claims 10, 11 and 13 is hereby respectfully traversed.

1. Shulman and Propster cannot be combined with Martin to teach or suggest all limitations of claims 10, 11 and 13.

As noted above in the §102 arguments, Martin (i.e., the primary reference) fails to provide teaching, suggestion or motivation for all limitations of independent claim 8. Since claims 10, 11 and 13 depend from claim 8, claims 10, 11 and 13 are patentably distinct over Martin for at least the same reasons noted above for the patentability of claim 8. In addition, Shulman and Propster are not relied upon, nor do they provide teaching, suggestion or motivation for any of the limitations recited in claim 8. Therefore, no combination of Martin and the remaining cited art can be used to render claim 8 (or the combined limitations of claim 8 and any of its dependent claims) unpatentable. Accordingly, removal of the §103(a) rejection of claims 10, 11 and 13 is respectfully requested.

Claims 1-4 and 15-20 were also rejected under 35 U.S.C. §103(a) as being unpatentable over Martin in view of Chaudhry. In addition, claim 5 was rejected under 35 U.S.C. §103(a) as being unpatentable over Martin, Chaudhry and Shulman, while claims 6-7 were rejected for being unpatentable over Martin, Chaudhry and Propster. As set forth in more detail below, removal of the §103(a) rejection of claims 1-7 and 15-20 is respectfully requested.

To establish a case of *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (C.C.P.A 1974);

MPEP 2143.03. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed.Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); MPEP 2143.01. The cited art does not teach or suggest each and every limitation of the currently pending claims, some distinctive limitations of which are set forth in more detail below.

2. Martin fails to provide teaching or suggestion for an apparatus (claim 15) or method (claim 1) for creating a data set by modifying a comments portion of a program, where the step of modifying includes activating a user-selectable link embedded within a comments portion of a program.

Independent claim 1 states, in part, "[a] method for generating computer executable code, comprising: creating a data set by modifying a comments portion of a program, wherein said modifying comprises activating a user-selectable link embedded within the comments portion...". Independent claim 15 (an apparatus) recites a similar limitation by including "a compiler for generating a data set... in response to user-activation of a link within a comments portion of a program".

With regard to claims 1 and 15, the Examiner agrees that "Martin differs from the claim in that Martin does not teach the data set is created by modifying a comments portion of a program" (*see*, e.g., Office Action, page 4; Final Office Action, pages 5 and 7). In regards to claim 1, the Examiner also agrees that Martin fails to teach that such modification is performed "by activating a user-selectable link embedded within a comments portion." (*see*, e.g., Office Action, page 4; Final Office Action, page 5). As such, the Examiner admits that Martin fails to provide teaching or suggestion for all limitations of present claims 1 and 15.

3. Chaudhry cannot be combined with Martin to overcome the deficiencies therein.

As noted above, the Examiner admits that teaching or suggestion for the above-mentioned limitations cannot be found within Martin. However, the Examiner suggests that such features are taught by Chaudhry. For example, the Examiner suggests that Chaudhry teaches a system that allows a programmer to select, modify, and insert hints (i.e., comments) into the source code that causes the compiler to generate executable code (*see*, e.g., Office Action, page 4; Final Office Action, page 5). The Examiner suggests that such teaching can be found within column 2, lines 31-45 and 55-59 Chaudhry.

First of all, Chaudhry is not available as prior art against the current application. To expedite prosecution, a declaration under 37 C.F.R. § 1.131 was filed along with a Response to the Office Action mailed January 24, 2005. The declaration and Response were filed on April 25, 2005 -- three months prior to the mailing of the Final Office Action on July 28, 2005.

However, statements in the Final Office Action suggested that the declaration filed on April 25, 2005 was ineffective to overcome the Chaudhry reference. In particular, the Examiner alleged that the declaration provided insufficient evidence to establish a conception of the invention prior to the effective date of the Chaudhry reference (May 31, 2000). The Examiner also alleged that the declaration failed to establish diligence from a date prior to the effective date of Chaudhry.

In an effort to overcome the above deficiencies, a revised declaration under 37 C.F.R. § 1.131 was filed along with a Response to the Final Office Action. The declaration and Response were filed on September 25, 2005 -- two months after the mailing of the Final Office Action on July 28, 2005. The Appellants believed that the revised declaration provided sufficient evidence to establish an invention date prior to May 31, 2000 for the subject matter of the current claims. The revised declaration also provided sufficient evidence to prove that due diligence was practiced from at least a time prior to May 31, 2000 to the filing date of the application on April 3, 2001. Because Chaudhry was filed provisionally on May 31, 2000, Appellants argued that Chaudhry was not available as prior art under 35 U.S.C. §103(a) against the current claims, and requested that the rejection of claims 1-7 and 15-20 be removed.

However, statements in the Advisory Action indicated that the revised declaration filed on September 25, 2005 would not be entered because: (a) it was not timely filed under MPEP 715.09, and (b) it was not properly executed under MPEP 715.04. As set forth in more detail below, Appellants respectfully request that the revised declaration be considered by the Board.

As set forth in MPEP 715.09, there are four distinct time periods in which an affidavit or declaration may be timely filed. For example, affidavits and declarations submitted under 37 C.F.R. §1.131 and other evidence traversing rejections are considered timely if submitted:

(A) prior to a final rejection;

(B) before appeal in an application not having a final rejection;

> (C) after final rejection, but before or on the same date of filing an appeal, upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented in compliance with 37 CFR 1.116 (e); or
>
> (D) after the prosecution is closed (e.g., after a final rejection, after appeal, or after allowance) if applicant files the affidavit or other evidence with a request for continued examination (RCE) under 37 CFR 1.114 in a utility or plant application filed on or after June 8, 1995; or a continued prosecution application (CPA) under 37 CFR 1.53 (d) in a design application.

In response to the allegation that the declaration was not timely filed, the Appellants assert that the original and revised declarations were filed on time under provisions (A) and (C) of MPEP 715.09, respectfully.

As noted above, the original declaration was filed three months prior to the mailing of the Final Office Action, thus satisfying provision (A) of MPEP 715.09. At the time, the Appellants believed that the original declaration provided the evidence needed to establish due diligence, as well as an earlier conception date. Prior to this time, the Appellants and their representatives had filed numerous declarations under 37 C.F.R. §1.131, using roughly the same format and language as provided in the original declaration, without incident or rejection from the Office. Therefore, the Appellants contend that the original declaration was filed in good faith and with the intention of satisfying all requirements under 37 C.F.R. §1.131.

Once notified of the shortcomings in the original declaration, the Appellants filed a revised declaration after the mailing of the Final Office Action in an attempt to overcome the deficiencies therein. Additional language was added to the revised declaration to prove that the Appellants did, in fact, maintain due diligence from at least a time prior to the effective date of Chaudhry (May 31, 2000) to the filing date of the application (April 3, 2001). Language was also added to support the Appellants contention of an earlier conception date (by noting specific portions of the Invention Disclosure statement containing the claim limitations). Such detail may have been omitted from the original declaration because it was not considered necessary to satisfy the requirements under 37 C.F.R. §1.131. For at least these reasons, the Appellants contend that the revised declaration was filed on time under provision (C) of MPEP 715.09.

As set forth in MPEP 715.04, an affidavit or declaration under 37 C.F.R. §1.131 may be properly executed if signed by one of the following parties: all the inventors of the subject matter claimed, less

than all inventors (where it is shown that less than all inventors invented the subject matter of the claims under rejection), the legal representative (if a petition under 37 CFR 1.47 was granted or the application was accepted under 37 CFR 1.42 or 1.43), or an assignee or other party in interest when it is not possible to produce the affidavit or declaration of the inventor. MPEP 715.04 further states, "where it is shown that a joint inventor is deceased, refuses to sign, or is otherwise unavailable, the signatures of the remaining joint inventors are sufficient."

In response to the allegation that the declaration was not properly executed, the Appellants assert that the revised declaration was properly executed even though the declaration was filed by less than all inventors of the claimed subject matter. Appellants assert that the revised declaration was properly executed because two of the three co-inventors were no longer employed at Cypress Semiconductor, and no forwarding addresses could be attained. The remaining inventor, Steve H. Kolokowsky, agreed to submit the revised declaration on behalf of the unavailable co-inventors. For at least these reasons, the Appellants contend that the revised declaration was properly executed under the provisions of MPEP 715.09.

Regardless of whether or not the revised declaration is considered by the Board, the Chaudhry reference fails to provide teaching, suggestion or motivation for the above-mentioned claim limitations, and therefore, cannot be combined with Martin to overcome the deficiencies therein. Even though Chaudhry should not be available as prior art, the Appellants wish to point out that the teachings of Chaudhry (which merely insert comments into source code) cannot be relied upon to provide teaching or suggestion for "creating a data set by modifying a comments portion of a program, wherein said modifying comprises activating a user-selectable link embedded within the comments portion," as recited in claim 1. The teachings of Chaudhry also fail to disclose the limitation of "generating a data set... in response to user-activation of a link within a comments portion of a program," as recited in claim 15. As such, the teachings of Chaudhry cannot be combined with those of Martin to overcome the deficiencies therein. Arguments in support of these allegations are set forth in more detail below.

As noted in a Response to the Final Office Action, Chaudhry fails to mention the use of links, user-selectable links or any other type of link, which may be embedded within a comments portion of a program and activated for modifying a data set. In other words, the "hints" disclosed by Chaudhry are not described as being "user-selectable" or capable of "user-activation." Instead, the "hints" disclosed by

Chaudhry are merely inserted into the source code portion of a computer program so that a speculative thread will not mark certain memory elements during particular read operations (*see*, e.g., Chaudhry, column 2, lines 31-45 and 55-59; column 9, lines 26-58 and FIG. 12 of Chaudhry).

In the Advisory Action, the Examiner appears to admit that teaching for the presently claimed link, which is either "user-selectable" or capable of "user-activation," cannot be found with Chaudhry. For example, in response to the Applicant's arguments provided in the Final Office Action Response, the Examiner suggests that Martin is relied upon for teaching a "data set comprising a link word (= symbol), so Chaudhry is cited for teaching [the] data set [is used] to form computer executable code [that] can be created by modifying a comments portion of a program (col. 2, lines 31-45; col. 2, lines 55-59)." (Advisory Action, page 2). As described in more detail below, even if Martin and Chaudhry were combined in the manner suggested by the Examiner, the combined teachings of Martin and Chaudhry would still fail to disclose all limitations of claims 1 and 15.

For example, the Examiner relies on Martin for teaching a data set comprising a link word (i.e., the "=" symbol shown in FIG. 9 of Martin). Although the "=" symbol of Martin may be embedded within a comments portion (see 1000b, FIG. 9) of a program, Martin does NOT teach or suggest that the "=" symbol is "user-selectable" (as recited in claim 1) or capable of "user-activation" (as recited in claim 15). Instead, the "=" symbol of Martin is merely inserted into the comments portion of the program to assign specification data (e.g., 99%) to some functional criteria (e.g., availability). In addition, Martin provides absolutely no teaching, suggestion or motivation that would enable one skilled in the art to conclude that, once inserted, the "=" symbol could somehow be selected or activated (by a user) to effectuate some purpose. Therefore, none of the cited art provides teaching or suggestion for a user-selectable link embedded within a comments portion, or a link that may be activated by a user. As a consequence, even if Martin and Chaudhry were combined, the combined teachings of the cited art would still fail to disclose all limitations of claims 1 and 15.

Conclusion

As explained above, Martin, Shulman and Propster each fail to teach, suggest or provide motivation for all limitations of claims 8, 10, 11 and 13. In addition, Martin, Shulman and Propster cannot be combined or modified to do so. Therefore, the limitations of claims 8, 10, 11 and 13 are considered to be patentably distinct over the cited art. Likewise, Martin and Chaudhry each fail to teach,

suggest or provide motivation for all limitations of claims 1 and 15. Since the teachings of Martin and Chaudhry cannot be combined or modified to disclose all limitations of claims 1 and 15, the limitations of claims 1 and 15 are considered to be patentably distinct over the cited art. Therefore, the §103(a) rejection of claims 10, 11 and 13 over Martin, Shulman and Propster and the §103(a) rejection of claims 1-7 and 15-20 over Martin, Chaudhry, Shulman and Propster is asserted to be erroneous.

CONCLUSION

For the foregoing reasons, it is submitted that the Examiner's rejection of claims 1-21 was erroneous, and reversal of the decision is respectfully requested.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

The present claims on appeal are as follows.

1. A method for generating computer executable code, comprising:

creating a data set by modifying a comments portion of a program, wherein said modifying comprises activating a user-selectable link embedded within the comments portion; and

inserting the data set into an applications program to form the computer executable code.

2. The method as recited in claim 1, wherein said creating comprises displaying the link within a line of text preceded by a comments designator.

3. The method as recited in claim 1, wherein said creating comprises displaying a window containing the comments portion and the data set.

4. The method as recited in claim 1, wherein said modifying comprises directing an on-screen pointer to the link and actuating a pointer device that is communicable with the on-screen pointer.

5. The method as recited in claim 1, wherein said modifying comprises:

initiating a pull-down menu;

directing a pointer to items shown on the pull-down menu; and

actuating a pointer device electrically coupled to the on-screen pointer.

6. The method as recited in claim 1, wherein said creating comprises setting byte fields within the data set for defining an electrical waveform.

7. The method as recited in claim 1, wherein said creating comprises setting waveform descriptor commands of a programmable interface circuit.

8. A computer-usable carrier medium comprising a computer program, wherein the computer program comprises:

a first text preceded by a comments designator and succeeded by at least one link word that is adapted for modification by an on-screen pointer; and

a second text displayed on a display device along with the first text for presenting a data set that changes dependent on modification to the link word by the on-screen pointer or by modification of the data set.

9. The computer-usable carrier medium as recited in claim 8, wherein the link word and the data set reside within a single window for display upon the display device, and wherein the single window is accessible by a pointer device linked to the on-screen pointer via a graphical user interface.

10. The computer-usable carrier medium as recited in claim 8, wherein the link word and the data set reside within two separate windows for display upon the display device, and wherein the two separate windows are accessible by a pointer device linked to the on-screen pointer via a graphical user interface.

11. The computer-usable carrier medium as recited in claim 10, wherein the two separate windows are adapted for concurrent display upon the display device.

12. The computer-usable carrier medium as recited in claim 8, wherein the data set is linked to an applications program to form computer executable code.

13. (Previously Presented) The computer-usable carrier medium as recited in claim 8, wherein the data set comprises several grouping of fields that define a waveform output for a programmable device.

14. The computer-usable carrier medium as recited in claim 8, wherein the data set comprises several grouping of fields that define address, data, control and timing signals sent from a programmable interface to a peripheral device.

15. An apparatus for generating programmable signals, comprising:

a compiler for generating a data set containing at least one field of bits in response to user-activation of a link within a comments portion of a program; and

hardware for generating programmable signals in response to the field of bits.

16. The apparatus as recited in claim 15, wherein the link is accessible by a user via a graphical user-interface.

17. The apparatus as recited in claim 15, wherein the data set is linked to an applications program to form computer executable code operable upon the hardware for generating the signals.

18. The apparatus as recited in claim 15, wherein the data set and the comments portion of the program are depicted upon a screen of a display device.

19. The apparatus as recited in claim 15, wherein the link comprises at least one word located one the same line as text that follow a comments designator.

20. The apparatus as recited in claim 19, wherein the comments designator notes the corresponding line of text as non-executable words separate and distinct from lines of program commands.

21. The computer-usable carrier medium as recited in claim 8, wherein the link word is activated by a user of the computer program to modify the data set.

IX. EVIDENCE APPENDIX

A declaration under 37 C.F.R. §1.131 was filed on April 25, 2005, but was not entered by the Examiner. In addition, a supplemental declaration under 37 C.F.R. §1.131 was filed on September 28, 2005, but was not entered by the Examiner.

X. RELATED PROCEEDINGS APPENDIX

No other prior and pending appeals, interferences, or judicial proceedings are known to Appellant or Assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.